IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

RCRev..No. 61 OF 2007()

RCA.195/2005 OF THE RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE
RCP.3/2004 OF THE RENT CONTROL COURT, PERAMBRA.

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REVISION PETITIONER/APPELLANT/RESPONDENT:

MATATHUM PADIKKAL MOIDEEN, S/O.ABDU,
AGED 61, BUSINESS, KALLODU AMSOM AND DESOM OF
KOYILANDY TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS: RESPONDENT/PETITIONER:

PUTHIYOTTIL VALIYA PEEDIKAYIL-
KUNHABDULLA HAJI, S/O. KUNHI MOIDEEN HAJI,
AGED 53, BUSINESS, RESIDING AT NADUKKANDIYIL,
ERAVATTOOR AMSOM AND KIZHINHANNIAM DESOM OF
KOYILANDY TALUK, KOZHIKODE DISTRICT.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

R.C.R. NO. 61 OF 2007

DATED THIS, THE 14TH DAY OF MARCH, 2007.

O R D E R

Raman, J.

Revision petitioner is a tenant under the first respondent- landlord, who filed R.C.P. 3/2004 before the Rent Control Court, Perambra, seeking eviction of the revision petitioner under Section 11(4)(iii) of Act 2/65. It was the contention of the landlord that the petition schedule building was let out to the tenant as per a registered kychit of the year 1972, which was later renewed in 1986, that he is doing hill produce business in the said premises, that Subsequent to this arrangement, the tenant constructed shop rooms in Perambra town which are sufficient for his requirements, that the tenant along with one Parakkandi Kunhabdulla own and possess 14 rooms in Perambara town bearing Nos. 362 to 375, out of which Room Nos. 366 and 369 to 375 are vacant, that besides those rooms, the tenant and others constructed other shop buildings which are let out on rent, that all the shop rooms constructed by the tenant are convenient for the business which he is conducting in the petition schedule premises and therefore, he is liable to

be evicted under Section 11(4)(iii) of the Act.

2. The tenant contended that all the shop rooms in the co-ownership of himself and Parakkandi Kunhabdulla were let out to tenants even prior to the kachit executed by him in 1986, that no room was constructed or entrusted to anybody by him after 1986, that Room Nos. 366 and 369 to 375 are in the co-ownership of himself and another which are in the first floor of the building and those rooms are not convenient to conduct hill produce business and are in the possession of tenants. He prayed for dismissal of the petition.

3. Besides the oral testimony of PW1 and RW1, Exts.A1 to A10, B1 to B15 and Ext. C1 form part of evidence in this case. The Rent Control Court, after considering the evidence on record and hearing both sides, allowed the petition against which the tenant filed R.C.A. 195/2005 before the Rent Control Appellate Authority, Kozhikode. The Appellate Authority re-appreciated the evidence on record and concurred with the finding of the Rent Control Court and confirmed its finding against which this revision is filed.

4. It is inter alia contended by the revision petitioner that the grounds urged under Section 11(4)(iii) of Act 2/65 is not satisfied in this case. According to him, Room Nos. 366 and and 369 to 375 were constructed

even prior to 1986 before the renewal of the kychit in his favour and that the said rooms are in the co-ownership and possession himself and another, that the said building is not convenient for carrying out the business in hill produce and that no other suitable rooms are available for his requirements Both the courts below found that admittedly petition schedule building belongs to the landlord and the revision petitioner herein is the tenant under him and that the tenant is conducting a business in hill produce in the petition schedule premises. While considering the contention that the other buildings are owned jointly by the tenant with Kunhabdulla and in order to attract Section 11(4)(iii) it should absolutely belong to the tenant, it was held that what is required to be considered under Section 11(4)(iii) is as to whether the tenant is in his possession a building or subsequently acquires or putting up a building reasonably sufficient for his requirement in the same city, town or village, and if so, the landlord will be entitled for an eviction. It is in evidence that the tenant along with one Abdulla has put up a building with sufficient rooms out of which some of them are lying vacant and that both the tenant and Abdulla have equal right and they are in enjoyment of the property jointly. Though the tenant relied on Exts.B4, B5 and B15 and contended that there is an agreement between himself and Abdulla that they should not themselves take the building on lease and the

building put up by them should be let out to strangers as an impediment for the tenant to occupy the building, the tenant by his own volition agreeing with another, with whom he had got equal right of arrangement not to let the building to any of the parties but only to strangers, proved that those documents were created only to make out a defence and to get avoid eviction. It is in evidence that the tenant has put up other buildings after he obtained the petition schedule premises and that some rooms in the ground floor and in the first floor are lying vacant. Exts. A4 to A7 were also relied on by the court below in support of the said finding. There is also no evidence to show that the above rooms were not sufficient for the requirement of the tenant and he has no case that the rooms are in exclusive possession of Abdulla, the co-owner. The court below did not inspire confidence in the plea raised by the tenant that there is any impediment for him in getting the said building especially when he jointly owns and possess the building with Abdulla. The contention as raised by the tenant, in the attendant circumstances, was considered and negatived by the court below. When admittedly, they are co-owners of the property, they are also in possession of the same. Therefore, the agreement, if any, between the tenant and his co-owner in no way advance his case of inability to occupy the building.

5. Then the question which arises for consideration is as to whether the building in his possession is reasonably sufficient for his business so as to attract Section 11(4)(iii) of the Act. When admittedly, number of rooms are there belonging to the revision petitioner/tenant who is in joint possession with the other co-owner, in the absence of any materials on record that the said building is not reasonably sufficient for carrying out the business of the revision petitioner, the view taken by the court below cannot be faulted.

6. On an overall consideration of the entire materials on record, it cannot be said that the order passed by the Rent Control Court as affirmed by the appellate authority is in any way illegal or wrong calling for any interference by this Court under Section 20 of the Kerala (Buildings) Lease and Rent Control Act. The revision petition is accordingly dismissed.

7. At this stage, learned counsel for the revision petitioner sought for a reasonable time to surrender vacant possession of the premises. Having considered the said plea, we think a reasonable time can be granted to the petitioner to surrender vacant possession of the premises. Accordingly, we direct that if there is any execution petition pending pursuant to the order of eviction passed by the authorities below the same shall stand deferred for a period of three months; ie. till 30th May, 2007, on condition that petitioner

shall file an undertaking in the form of an affidavit before the court below that he shall surrender vacant possession of the building on or before 30.5.2007, that he shall continue to pay the amount equivalent to the monthly rent for use and occupation of the building till vacant possession is given and that he shall not induct any third party to the petition schedule premises. Petitioner shall also pay the arrears of rent, if any, within one month from today. The undertaking as stated above along with the arrears of rent, if any, shall be filed/deposited before the court below within a month from today. If the petitioner fails to comply with any of these conditions,, it will be open to the landlord to proceed with the execution steps.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-